

EXECUTIVE OFFICE,
Austin, August 6, 1870.

Hon. IRA H. EVANS,

Speaker of the House of Representatives:

SIR: I feel it my duty to return to your House, where it originated, "An Act for the relief of the Houston and Texas Central Railway Company," and ask that the same be reconsidered.

The constitution (article nine, section nine) provides that the Legislature "shall, from time to time, as may be necessary, invest the principal of the school fund in the bonds of the United States government, and in no other security." The act under consideration entitled "An Act for the relief of the Houston and Texas Central Railway Company," is in direct conflict with the constitutional provision cited. It undertakes, after attempting to consolidate the Washington county Railroad Company with the Central, to make an investment of a portion of the school fund that had been loaned to the two companies named prior to the adoption of the present constitution, in new bonds of the Central, (which the preamble of the act says are "*issued*" while the body says "*are issued or to be issued*") and to release \$152,864 55 of the school money *altogether*. The whole amount that this company is indebted to the school fund (including this amount proposed to be released) was, on March 1, 1870, \$756,197 57.

It does not lie within the power of the Legislature to invest or re-invest the school fund otherwise than as provided by the constitution. It cannot remit or grant any portion of that fund as is attempted in this act.

Section four of this act, under the guise of relieving from a forfeiture under an act of September 21, 1866, styled "An Act granting lands to the Houston and Texas Central Railway Company," appears to be an ingenious device to evade section six of article ten of the constitution, and to continue to that company a grant of land which has been forfeited by its *own failure* to comply with the law, and which has been cut off by the constitution.

Section six of the act provides that "all laws and parts of laws now in force concerning this company, not in conflict with the foregoing provisions, shall not be affected by the passage of this act," a seemingly unnecessary and harmless provision, but one which must have been devised so as to declare by implication that "all laws and parts of laws in conflict with it are by it affected" or *amended*. As section eighteen of article twelve of the constitution does not permit a law to be revised or amended by reference to its title, it is surely not competent for the Legislature to "*affect*,"

that is *revise* or *amend*, laws and parts of laws by implication and without so much as making reference to their titles.

Time only remains to call to your attention two other constitutional objections to this act.

Section two of the act, by providing for the investment of the school fund in new bonds "issued or to be issued by virtue of a deed of trust executed by said company on the first day of July A. D. 1866," makes the act a "retroactive law" and causes it to conflict with section fourteen of article one of the constitution.

This provision merits a most serious consideration not only on account of the constitutional point, but because it suggests inquiry as to the validity of a deed and bonds made (whether in behalf of one or both of the roads mentioned in the act) prior to any lawful authority on the part of either or both to make them.

Had section seventeen of article twelve of the constitution prescribed that every law enacted by the Legislature "shall embrace *more than one* object, and they shall *not* be expressed in the title" instead of the contrary, this act might, so far as its title is concerned, be held to have complied with its requirements, but not otherwise. If instead of "An Act for the relief of the Houston and Texas Central Railway Company," it had been styled "An Act investing and donating portions of the school fund;" "An Act for the relief of the Washington County Railroad Company," or "An Act to consolidate and confer new affirmative franchises to the railroad companies in it named," its title would carry a better idea of the chief of the various objects embraced in its scope, some of which (such as the right to branch) do not lie within the import of the vague word "*relief*." Considerations of public policy, some of which are obvious, might be urged against this act, but to present them would be superfluous.

Upon an examination of the statutes abundant evidences will appear that perhaps no corporation chartered by this State has dealt more largely in promises and has been more slack in performance; has more frequently come forward in one mode or another for relief, and has caused greater cost in the way of legislation for its own benefit than the corporation that has obtained this act. The fact that such is its record should not operate in its *favor*, especially when it sets at naught the constitution, and seeks to spoliage the school fund.

The act asserts in the preamble that the State may exchange its present lien for the seven per cent. bonds of the company "without in any manner endangering the school fund."

This statement is not the *truth*. The said seven per cent. bonds of the Houston and Texas Central Railroad are now worth in the

money market, about eighty-five to eighty-eight cents per dollar in currency. My correspondents in New York, to whom I applied for information, write as follows: "In looking around to find the market value to-day, (15th July), I was offered eighty-five for \$100, 000;" "were a large sum put on the market of these bonds, under orders to sell promptly, I doubt whether they would bring even 85 flat." * * * The agent's price for the bonds in New York is ninety, and accrued interest; but I doubt very much whether any sales for money have been made for that price; at least, I know that our firm have frequently bought and sold these bonds for years past, and always under the agent's price."

As the lien we now have on this railroad is worth dollar for dollar in gold, and the amount can be realized at once, and as gold is now selling at upwards of 120 per cent. in currency, and as we can take this currency and buy these very bonds at eighty-five cents on the dollar, it can very easily be seen that the school fund is *endangered* to the amount of more than \$250,000 currency by this exchange.

But in addition, the act as before stated, proposes to release \$152,-864 55. The company claims this under pretence that it was paid during the rebellion, in conformity with laws then controlling. The fact is, that all railroad companies indebted to the school fund, were, by an act passed January 11, 1862, relieved from the necessity of any payment of either interest or principal of the school fund, till "six months after the termination" of the war. Acts were subsequently passed, (December 16, 1863, and November 15, 1864,) allowing the companies to pay interest and principal in Texas treasury warrants, and bonds and coupons. These acts were passed *avowedly* for the purpose of keeping up the credit of that sort of money and security issued by a government in hostility to the United States, and the recognition of payments made thereunder violates the spirit (if not the letter,) both of the fourteenth amendment to constitution of the United States, and section thirty-four, article twelve, of our own constitution. Further, the payments made by these companies, were delayed till the class of currency paid in was scarcely worth as much as waste paper. The only payments made by the Houston and Texas Central Railroad, were from January to August 1864, when this paper might *possibly* have averaged twenty-five or thirty for one dollar of gold, but not more; while the only payment made by the Washington county railroad was in May 1865, (\$31,543 80) *more than one month after* the surrender of General Lee. These are the sort of payments which the act proposes to accept as equivalent to gold.

These two roads have, since 1867, ceased *altogether* to make pay-

ments of either principal or interest due the school fund, not, however, from *inability* to pay, as the receipts of the Houston and Texas Central Railroad *alone*, since that year, beyond all current expenses, have been largely more than sufficient to pay off all the indebtedness of both roads.

While we are debating the propriety of a system of internal improvements to be aided by the State, the management of this Houston and Texas Central Railroad, in its relation to the State and its influence on legislation, may well cause us to hesitate.

At every session of the Legislature and conventions of the people for years past, this road has managed to procure some legislation to "*relieve*" it from the consequences of its *own* want of compliance with its promises, entered into under *previous acts of relief*. The present act is a sweeping instance of the sort. Overflowing with wealth wrung by exorbitant charges from the people, forgetting the princely donation it has already received in lands, and emboldened by previous success, its managers now throw off the last scruples, and seek to evade their solemn obligations in every respect, even grasping at the fund sacredly hoarded for the education of the children of the State.

So far, this corporation has been successful in enforcing its demands; and it remains to be seen whether any limit can be placed thereon. If this comparatively weak corporation can thus control legislation, and defy law, justice and its own obligations, what may we expect from the great monopolies we are anxious to build up!

An exhibition of patriotic firmness on the part of the Legislature, in resisting this project, will save the State from many ills.

Respectfully,

EDMUND J. DAVIS,

Governor.